

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472



Dan L. Cartin, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: James Leamon and Codey Tamez

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 25, 2017

SUBJECT: Proposed initiative measure 2017-2018 #9, concerning the legal age for purchase, possession, and consumption of alcohol

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

An earlier version of this proposed initiative, proposed initiative 2017-2018 #7, was the subject of a memorandum dated **December 2, 2016**. Proposed initiative 2017-2018 #7 was discussed at a public meeting on **December 5, 2016**. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the **Colorado Revised Statutes** appear to be:

1. To lower the minimum age to possess, purchase, and consume malt, vinous, and spirituous liquor from twenty-one years of age to eighteen years of age.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. There are several locations in the Liquor Code that directly or indirectly relate to the drinking age in Colorado being twenty-one. Would you consider amending these sections as well in order to provide consistency within the Liquor Code? The relevant sections include:
 - a. 12-47-103 (7.6) – requiring an "expert taster" to be twenty-one years of age or older;
 - b. 12-47-103 (24.7) – requiring a "qualified employee " to be twenty-one years of age or older;
 - c. 12-47-103 (24.8) – requiring a "qualified student" to be twenty-one years of age or older;
 - d. 12-47-408 (7)(c) – prohibiting an employee of a liquor-licensed drugstore who is under twenty-one years of age from delivering or having contact with malt, vinous, or spirituous liquors;
 - e. 12-47-901 (5)(p)(I)(B) – prohibiting a person licensed to sell at retail from employing a person who is at least eighteen years of age but under twenty-one years of age to sell or dispense malt, vinous, or spirituous liquors unless the employee is supervised by another person who is on the licensed premises and is at least twenty-one years of age;
 - f. 12-47-901 (5)(p)(II) – prohibiting a person licensed as a tavern, lodging and entertainment facility, retail liquor store, or liquor-licensed drugstore from permitting an employee who is under twenty-one years of age to sell malt, vinous, or spirituous liquors;
 - g. 12-47-901 (5)(p)(III) – prohibiting a person licensed as a retail liquor store or a liquor-licensed drugstore from permitting an employee who is under twenty-one years of age to deliver or otherwise have any contact with malt, vinous, or spirituous liquors offered for sale on, or sold and

- removed from, the licensed premises of the retail liquor store or liquor-licensed drugstore; and
- h. 12-47-901 (10)(a) – prohibiting a retail licensee or an employee of a retail licensee from selling malt, vinous, or spirituous liquors to a consumer for consumption off the licensed premises unless the retail licensee or employee verifies that the consumer is at least twenty-one years of age.
2. Section 25-5-403 (2), Colorado Revised Statutes, prohibits a person from selling, giving, or in any way furnishing to another person who is under the age of twenty-one years any confectionery which contains alcohol in excess of one-half of one percent by volume. Do you intend to lower the age to eighteen for purposes of this law?
3. For purposes of the crimes of driving under the influence and driving while ability impaired, current law treats a minor as person who is under the age of twenty-one and delineates penalties and procedures based on the age of the offender. Do you intend to amend these statutes as well? The sections that involve a delineation based on age include:
- a. 42-2-121 (5)(a)(II), (5)(a)(III), and (5)(b);
 - b. 42-2-125 (1)(b.5), (1)(g)(II), (1)(g.5), and (2.5);
 - c. 42-2-126 (1)(d), (1)(e), and (4)(b)(II);
 - d. 42-2-129;
 - e. 42-2-132.5 (4)(a);
 - f. 42-2-403 (2)(d)(II) and (2)(d)(III);
 - g. 42-4-1301 (2)(d)(I) and (6)(i)(I);
 - h. 42-4-1301.1 (2)(a)(I); and
 - i. 42-4-1715 (1)(b)(I)(B); (1)(b)(I)(C), and (1)(b)(II).

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

Note: Due to the length of this proposal and the difficulty of identifying and offering suggested corrections for each one of the technical issues in the time allotted, the following list should be considered as representative, not exhaustive. Please consult the "Initiative Drafting Guide and Style Sheet", available online at:

<https://www.colorado.gov/pacific/sites/default/files/Initiative%20Drafting%20Guide%20and%20Style%20Sheet.pdf>).

1. Before each amending clause, number each section that is being amended or added with a section number (e.g., **SECTION 1.**, **SECTION 2.**). Your proposed initiative uses Roman numerals.
2. Amending clauses:
 - Amending clauses should use complete citations to state what is being amended, including the subsection number, paragraph letter, subparagraph number, and sub-subparagraph letter as needed. Without a complete citation, it is not possible to determine what provision is being amended as there may be many subparagraphs with the same number within a single section.

For example, instead of citing just (VII) in Section 6, the amending clause should read:

SECTION 6. In Colorado Revised Statutes, 12-47-307, **amend** (1)(a)(VII) as follows:

All of the amending clauses in the proposed initiative should be changed to follow this format.

- All provisions that are being amended should be included in the amending clause. Your amending clause for 12-47-901 does not include (5)(a)(I), (5)(a)(II)(A), (5)(p)(I)(B), (5)(c), and (5)(h), which are all amended in that section.
3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

Subsections are indicated by numerals [e.g. (1), (3)], paragraphs are indicated by lowercase letters [e.g., (b), (e)], subparagraphs are indicated by Roman numerals [e.g., (I), (II)], and sub-subparagraphs are indicated by capital letters [e.g., (B), (E)].

4. Provisions that are being amended should appear in numeric and alphabetic order, in the same way that they appear in the Colorado Revised Statutes. For example, in Section 8, you appear to be amending subsection (5)(a)(I), followed by (5)(p)(I), followed by (5)(a)(II)(A), followed by (5)(p)(I)(B). The correct order would be (5)(a)(I), then (5)(a)(II)(A), then (5)(p)(I), then (5)(p)(I)(B).
5. When amending current Colorado law, the entire provision must be shown with exactly the same words and punctuation that appear in Colorado law, including any subheadings and introductory portions (see comment 6 below for more information about introductory portions). It is standard drafting practice to use SMALL CAPITAL LETTERS (rather than ALL CAPS) to show the language being added to, and ~~stricken type~~ to show language being removed from, the Colorado constitution or the Colorado Revised Statutes.
 - Throughout your proposed initiative, you have correctly used this format when showing the following change: "~~twenty-one~~ EIGHTEEN". However, in section 12-47-402 of the proposed initiative, "licensees' employees violate certain provisions of article 46 of this title and this article including the sale or service of alcohol beverages to" and "or to visibly intoxicated persons" have been deleted altogether. If it is the proponents' intent that those words should be deleted, the words should be shown in stricken type.
 - In the same section, you have added "are utilized to investigate sales of alcohol beverages by liquor licensees to underage persons" and have not shown this new language in small capital letters.
 - You have also misidentified provisions of Colorado law. For example, in section 12-47-901, subsections (5)(p)(I) and (5)(p)(I)(B) are completely different from actual statutory language.

Please review your amendments throughout 12-47-901 for errors in current language, stricken type, and new language.

6. An introductory portion is text that precedes other text, such as a list, as shown in the following example:

(19) "Transact" as applied to insurance means and includes any of the following:

- (a) Solicitation and inducement;
- (b) Negotiations preliminary to effectuation of a contract of insurance;
and
- (c) Execution of a contract of insurance.

Although the introductory portion (in the above example, the introductory portion is text that follows (19)) and the text that follows (in the example, paragraphs (a), (b), and (c)) are separated by the numbering and lettering scheme, they are logically and grammatically inseparable: On its own, the text following paragraph (a) does not make sense unless read in conjunction with the introductory portion for subsection (19).

If statutory language that follows an introductory portion is amended, that introductory portion should always be included in the bill, even if the introductory portion will not be amended. This ensures that the amended text is read in its fullest context. There are two ways to identify introductory portions. First, for any given subsection, if the higher level entry ends with a colon, it is an introductory portion. In the above example, subsection (19) is the higher level entry for paragraphs (a), (b), and (c). Second, if the text of any subsection is an incomplete sentence, there will always be an introductory portion before it. In the above examples, paragraphs (a), (b), and (c) are incomplete sentences. Please note that it is possible to have complete sentences, and even multiple sentences, following an introductory portion, too.

In the proposed initiative, multiple sections are missing their corresponding introductory portions. Also, in section 12-47-901 (5)(c), Colorado Revised Statutes, in the proposed initiative, the phrase "for any person" was added, but if you read paragraph (c) in conjunction with the introductory portion in subsection (5), the addition of that phrase does not make sense.

7. You appear to have copied in language unintentionally that is neither a part of current Colorado law nor an intended amendment to it.

In section 12-47-901 in the paragraph you have identified as (h)(II), the language "Page 48 of 58 COLORADO LIQUOR CODE" is included in the middle of the paragraph. It is not Colorado law and doesn't make sense as an amendment.

Also in section 12-47-901, the warning in the paragraph you have identified as (c) includes an extra "(Warning)" to the left of the heading. This is not part of the current law.

Please review the language in the proposed initiative to determine whether other language has been inadvertently added.